No. 81-1859

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF ILLINOIS,

*Petitioner,*

*vs.*

RALPH LAFAYETTE,

*Respondent.*

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

## BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. JOINED BY

**The CHICAGO POLICE DEPARTMENT, the GULF AND GREAT PLAINS LEGAL FOUNDATION OF AMERICA, INC., the ILLINOIS ASSOCIATION OF CHIEFS OF POLICE, INC., the INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., and the NATIONAL SHERIFFS' ASSOCIATION, INC.**

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## BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. JOINED BY The CHICAGO POLICE DEPARTMENT, the GULF AND GREAT PLAINS LEGAL FOUNDATION OF AMERICA, INC., the ILLINOIS ASSOCIATION OF CHIEFS OF POLICE, INC., the INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., and the NATIONAL SHERIFFS' ASSOCIATION, INC.

This brief is filed pursuant to Rule 36 of the Supreme Court Rules. Consent to file has been granted by Hon. Tyrone C. Fahner, Attorney General, State of Illinois, Counsel for Petitioner, hereinafter called "State", and Robert Agostinelli, Esq., Counsel for Respondent, hereinafter called "defendant". Letters of Consent of both parties have been filed with the Clerk of this Court. Municipal governments are not required to obtain consent to file as *amicus curiae*.

## INTEREST OF AMICI

**AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. (AELE),** as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

**AELE** has previously appeared as *amicus curiae* forty-seven times in the Supreme Court of the United States, and thirty-three times in other appellate courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

**THE CHICAGO POLICE DEPARTMENT, CITY OF CHICAGO,** a municipal corporation, is represented by its chief executive officer, commanding the second largest metropolitan police department in America. He is responsible for the effective investigation, charging of crime, and processing of arrestees, in one of the most populous and diverse areas of our nation.

**THE GULF & GREAT PLAINS LEGAL FOUNDATION OF AMERICA, INC. (GGP),** is a non-profit, tax-exempt corporation, supporting the operations of a public interest law firm. It functions nationwide, although its efforts are concentrated most heavily in the states of the gulf coast and great plains regions. All litigation undertaken by GGP is approved by its Board of Directors, who are attorneys and business persons residing throughout this midwestern area.

Among other goals, GGP seeks to preserve a rational, workable criminal justice system and an appropriate constitutional balance between the Federal Government and the states. In pursuit of these goals, GGP has appeared as *amicus*

*curiae* in the Supreme Court of the United States, the Federal District Courts, in the Circuit Courts of Appeals, and in various state courts.

**THE ILLINOIS ASSOCIATION OF CHIEFS OF POLICE, INC.,** is a not-for-profit Illinois association and consists of over 600 members who are Illinois police chiefs and senior law enforcement executives. It seeks to represent in our courts the concern of police administrators with the problems of crime and police effectiveness in dealing with crime, with special emphasis upon the problems and concerns of police officers who face numerous legal and practical problems on a day-by-day basis in their efforts to protect public safety.

**THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC. (IACP),** is the largest organization of police executives and line officers in the world, consisting of more than 14,000 members in 75 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

**THE NATIONAL SHERIFFS' ASSOCIATION, INC. (NSA),** is a not-for-profit organization, with over 50,000 members, including sheriffs and their deputies, municipal, state and federal law enforcement officers, and other criminal justice professionals. NSA encourages and promotes the fair and efficient administration of justice through the establishment of standards, research, educational courses and publications and crime prevention programs.

*Amici's* interest arises from the compelling constitutional and policy questions pertaining to routine law enforcement booking procedures involved in the opinion of the court below reported as *People* v. *Lafayette,* 99 Ill. App. 3d 830, 425 N.E. 2d 1383 (3d Dist. 1981), in which it was held that a warrantless search of an arrestee's shoulder bag, which was not seized from

him until during the booking process, violated the Fourth Amendment because the purse-like bag carried an expectation of privacy independent of the defendant's body and clothing. We focus **only** upon the narrow issue of the inventory search conducted at the time of a defendant's incarceration upon being taken into custody. We note that the State of Illinois also argues the propriety of a "delayed" search incident to arrest. While this argument poses an interesting question, *amici* do not presently address that issue.

## ARGUMENT

### AFFIRMANCE OF THE DECISION OF THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT, AS IT PERTAINS TO BOOKING SEARCHES, WILL LEAD TO IRREPARABLE DAMAGE TO THE INTERESTS OF LAW ENFORCEMENT AGENCIES, THE PUBLIC, AND ARRESTEES THEMSELVES, BY PREVENTING ROUTINE INVENTORY SEARCHES DURING NORMAL BOOKING PROCEDURES.

*Amici* will not discuss at length the legal arguments made by the State in this case on the inventory search issue, although we are in general accord with such arguments. We will, however, address some of the important policy issues involved in this case, and point out their importance to all groups and concerned parties.

We note initially that the ruling of the court below is quite clearly against the weight of authority in the state and federal courts. Professor Wayne R. LaFave, in his treatise on the Fourth Amendment states the rule succinctly:

> Currently, such evidence [resulting from routine booking searches] is admissible, and this is generally so even when the inventory has been most thorough. It is customary for the booking inventory to involve an item-by-item examination of everything in the arrestee's pockets or otherwise on his person, including looking into his wallet or into containers on the person; it may even extend to a strip search.

2 W. LaFave, *Search and Seizure*, sec. 5.3 at 307 (1978).

*Amici* submit that the examination of the contents of defendant's shoulder bag, or purse, was a classic routine inventory search conducted pursuant to standard detention facility procedures. In *South Dakota* v. *Opperman*, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976), this Court upheld a routine inventory search of an impounded automobile. Various other courts have extended the rationale of *Opperman* to routine inventory searches of articles possessed by a person

lawfully taken into custody. *See, e.g., United States* v. *Bloomfield,* 594 F.2d 1200, 1201-1202 (8th Cir. 1979); *Sumlin* v. *State,* 266 Ark. 709, 587 S.W.2d 571, 577 (1979); *Dearing* v. *State,* 393 N.E.2d 167, 171 (Ind. 1979). As noted by the Supreme Court of Indiana in *Dearing* v. *State, supra:*

> Our analysis of this issue begins with the case of *South Dakota* v. *Opperman,* 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000. The issue there before the United States Supreme Court was the propriety of an inventory of an automobile; however, an examination of Justice Burger's majority opinion reveals general guidelines to determine the constitutionality of any type of inventory. The Court, in finding a distinction between searches pursuant to criminal investigations and 'noncriminal' inventories, noted that the making of inventories is not governed by the 'probable cause' concept, nor is a warrant required. Rather, the test of the constitutionality of an inventory is whether, under all the circumstances, the intrusion was reasonable.

393 N.E.2d at 171.

In order to test this issue of reasonableness, it is helpful to consider the three basic interests involved in inventory searches, whether of vehicles, or of containers found on the person of an arrestee, such as wallets, purses, handbags, briefcases, etc. The three interests were identified by this Court in *Opperman* as: (1) protection of the arrestee's property while it remains in law enforcement custody; (2) protection of the officer against claims of lost or stolen property; and (3) protection of the officer from danger. *South Dakota* v. *Opperman, supra,* 428 U.S. at 369.

Although there is little dispute over these principles, cases involving the inventory of closed containers implicate weighty Fourth Amendment interests. Some courts have held that a closed or locked container should be inventoried as a unit without searching its contents, while others have held that the contents of closed or locked containers must be inventoried to protect the three interests we have just noted. The courts have

often employed a balancing test, weighing the arrestee's right to privacy in the contents of the container against the State's interest in protecting these interests. It should also be noted that when a person carries items of personal property in public places, even if they are on his person, it is reasonable to assume a diminished expectation of privacy for Fourth Amendment purposes, compared to the privacy interest that would be involved in a home or other private setting.

Most of the closed container cases have involved items similar to that in the instant case, i.e., luggage, briefcases, purses, handbags, and the like.[1] With respect to wallets, which *amici* submit are not functionally different from the typical closed containers cited in these cases, and certainly not from the relatively small purse involved in the instant case, the courts are apparently uniform in holding that it is permissible to inventory the contents of an arrestee's wallet pursuant to an established law enforcement agency inventory policy.[2]

---

[1] *See, e.g., United States* v. *Monclavo-Cruz*, 662 F. 2d 1285 (9th Cir. 1981) (purse); *United States* v. *Bloomfield, supra* (knapsack); *United States* v. *Schleis*, 582 F. 2d 1166 (8th Cir. 1978) (locked briefcase); *Sumlin* v. *State, supra* (purse); *Parris* v. *State*, 270 Ark. 269, 604 S. W. 2d 582 (Ct. App. 1980) (purse); *Delatte* v. *State*, 384 So. 2d 245 (Fla. App. 1980) (travel bag); *People* v. *Helm*, 89 Ill. 2d 34, 431 N. E. 2d 1033 (1981) (purse); *Dearing* v. *State, supra* (suitcase); *Bradford* v. *State*, 401 N. E. 2d 77 (Ind. App. 1980) (purse); *People* v. *Miller*, 312 N. W. 2d 225 (Mich. App. 1981) (briefcase); *People* v. *Merchant*, 86 Mich. App. 355, 272 N. W. 2d 656 (1978) (briefcase); *State* v. *Prober*, 98 Wis. 2d 345, 297 N. W. 2d 1 (1980) (purse); *State* v. *McDougal*, 68 Wis. 2d 399, 228 N. W. 2d 671 (1975) (locked suitcase).

[2] *See, e.g., United States* v. *Matthews*, 615 F. 2d 1279, 1286 (10th Cir. 1980); *United States* v. *Gallop*, 606 F. 2d 836, 839 (9th Cir. 1979); *United States* v. *Jenkins*, 496 F. 2d 57, 73 (2d Cir.), *cert. denied*, 420 U. S. 925 (1975); *United States* v. *Gardner*, 480 F. 2d 929, 931 (10th Cir.), *cert. denied*, 414 U. S. 977 (1973); *State* v. *Gelvin*, 318 N. W. 2d 302 (N. D. 1982); *State* v. *Lind*, 322 N. W. 2d 826 (N. D. 1982); *State* v. *Mordeszewski*, 68 Wis. 2d 649, 229 N. W. 2d 642, 647-649 (1975).

Some few courts have reasoned that the State's interests can be adequately served in cases involving the inventory of closed objects or containers, if such items are merely taped shut, without inventorying their contents, and listed on the inventory as "one (container or closed object) and contents." *See, e.g., People* v. *Helm,* 89 Ill. 2d 34, 431 N. E. 2d 1033, 1035 (1981); *People* v. *Bean,* 107 Ill. App. 3d 662, 437 N.E. 2d 1295, 1300 (1982); *State* v. *Gelvin,* 318 N.W. 2d 302, 318 (N.D. 1982). That view, however, falls far short of adequately protecting the proper interests of the State in these cases, or, indeed, even the protection of the arrestee. We agree with the statement of the Supreme Court of North Dakota in *State* v. *Gelvin, supra,* in assessing the efficacy of such a procedure, and respectfully urge this Court to consider its practical implications.

> In order to fully protect the State's interest in shielding its officers from frivolous claims or disputes over lost or stolen property, and to fully protect the detainee's property while it remains in police custody, it was necessary to inventory the contents of the wallet. As noted by the Court of Appeals of Michigan in *People* v. *Walker,* 58 Mich. App. 519, 228 N.W. 2d 443, 446 (1975): "It would be naive and pointless to assume that law enforcement officials may store an arrestee's personal effects without first determining what it is they are inventorying." We also agree with the language of Justice Hansen of the Supreme Court of Wisconsin in his dissent in *State* v. *McDougal,* 68 Wis.2d 399, 228 N.W.2d 671, 679 (1975): "For the court-specified purpose of protecting against future claims of impounded property being missing, such inventorying goes to contents, as well as container. To list, '1 purse' or '1 pocketbook' would provide no protection at all to the police against a claim that $100 or $1,000 was later missing from purse or pocketbook."

318 N.W.2d at 306.

In addition to the impracticability and ineffectiveness of the limited procedure advocated by a few courts, its very real danger to law enforcement officers and the safety of the custodial facility should be considered by this Court. Since it is

permissible to search an arrestee's person during the booking procedure, in part to protect the officer from weapons, explosives, and the like, it should be permissible to search a hand-held purse or shoulder bag, items that are intimately connected with the arrestee's person. In fact, these items may pose an even greater threat to the safety of law enforcement officers, in view of present day sophisticated weaponry. As the court in *United States* v. *Berry*, 560 F.2d 861, 864 (7th Cir. 1977) stated: "(a purse) might be characterized as 'immediately associated with the person of the arrestee'* * *." And as noted by Justice Daniel Ward, in his dissent in *People* v. *Helm, supra:*

> Who is able to say what a purse of one under arrest may contain? "Growing Up Underground," an autobiographical reminiscence of Jane Alpert, who was described as a woman radical of the 1960's, was reviewed in December 1981 in a Chicago newspaper. A portion of the review reads: "Several weeks later, as Alpert transported a purse full of dynamite to the New York City Federal Building, she felt, 'as I imagined I would on my wedding day.' " In October 1981, in New York, a gun battle followed a robbery attempt on an armored truck. Two police officers and a security guard were murdered. Two women members of the so-called radical underground were among those arrested at the time. The public and police would be astonished to find that the search of the women's purses incident to their arrest or when making an inventory at their booking at the police station might be held an unreasonable search and any evidence seized declared to be inadmissible.

431 N.E.2d at 1036.

*Amici* do not urge this Court to adopt an overbroad rule that would permit the police to conduct searches violative of the Fourth Amendment under the guise of an inventory search. Nor do we seek to diminish the reasonable expectation of privacy that would be violated by a strip search conducted in the absence of probable cause. Sufficient restraint upon possible abuse is provided by reference to typical jail or lock-up procedures followed by law enforcement agencies throughout

the country. These procedures minimize the possibility of abuse and at the same time protect the valid interests of all concerned. Additionally, the mere fact that the police also have a suspicion that contraband or evidence will be found should not invalidate an otherwise valid inventory search conducted pursuant to such a procedure. *United States* v. *Ducker*, 491 F.2d 1190, 1192 (5th Cir. 1974); *Mooney* v. *State*, 243 Ga. 373, 254 S.E.2d 337, 344, *cert. den.*, 444 U.S. 886 (1979).

We note that the officer in the instant case acted pursuant to such a standard detention facility procedure. Sergeant Mietzner of the Kankakee, Illinois, Police Department, the booking officer, testified that when he arrests a person with a purse, he examines the contents of the purse as a part of the routine booking procedure. 425 N.E. at 1384; Petition for Writ of Certiorari to the Appellate Court of Illinois, Third Judicial District, No. 81-1859, p. 4. In accordance with that routine procedure, a Property Index Card of the Kankakee Police Department was prepared, describing the defendant's property. A facsimile of the Card used in this case is reproduced here:

PROPERTY INDEX CARD — KANKAKEE POLICE DEPARTMENT

1. Ledger No. 80P-539 — 2. Bin No. 09.59
3. Name of Owner LAFAYETTE, RALPH — 4. Case No. 80A-580
5. Address ST ANNE — 6. Phone
7. Office FRAZIER — 8. No. of Pieces
9. Phy. Ev. ( ) 10. Per. Prop. (X) 11. Found Prop. ( ) 12. Rec. Prop. ( )
13. Date 9-1-80 — 14. Time M
15. Description of Property BLK SHOES $79.00 USC RRD POUCH 3 KEYS BAGG PANTS VEST BAGG SHIRT
16. Location
17. Claimed by Owner Date 02-Sept 80 — 18. Time 3:42 P M
19. Signed: Owner [signature]
20. Released by: [signature]
21. Sold at Auction: Date

This standard procedure, and the use of the written record card, comports with the recommended procedures adopted by

the National Sheriffs' Association, Inc. (NSA). NSA is the national standard-setting organization for the thousands of sheriffs' detention facilities in the United States. In many jurisdictions the sheriff's detention facility is the place of initial reception and processing of arrested persons. In its *Handbook on Jail Security, Classification, and Discipline,* published in 1974, NSA makes the following recommendations:

> The Booking Record
>
> The booking record should be prepared by the arresting agency, since that agency will prosecute and the booking record will contain a positive identification of the arrestee, as well as other pertinent information.* * *
>
> The following items should appear on the booking record:
>
> * * *
>
> Property taken by jailer with a description of articles (see copies of property forms)
>
> | | | |
> |---|---|---|
> | Money | Glasses | Lighter |
> | Watches | Wallet | Knife |
> | Keys | Rings | Miscellaneous personal articles (indicated by "P.A.") |
>
> * * *
>
> Information on the booking slip should contain property *not* taken as well as property taken.[3]

*Handbook on Jail Security, Classification, and Discipline,* National Sheriffs' Association 8, 12, 13, 14-18 (1974).

---

[3] Examples of booking record forms are illustrated in the *Handbook,* including:

* * *

San Joaquin County (California) Jail;
Denver County (Colorado) Jail;
Jefferson County Sheriff's Department—Golden, Colorado;
Weber County (Utah) Sheriff's Department;
Salt Lake County (Utah) Sheriff's Office.

Some examples of the language used in typical booking and inventory procedures adopted by law enforcement agencies include the following:

> Everything taken from the prisoner shall be placed on the booking counter in full view of the booking officer, the searching member and the prisoner. . . The booking officer shall take custody of all personal property found in the possession of the arrested person and enter a detailed description of the property on the arrest record.

*Department General Order* No. Q-3, San Francisco Police Department, San Francisco, California.

> Lockup personnel will immediately search each arrestee brought into the lockup. Searches will be conducted by Department members of the same sex as the arrestee. . . All monies, valuables, lighters, medications and/or items which could be used to effect an escape, cause an injury to the arrestee or other persons detained in the lockup, or used to deface or damage the lockup facility will be taken from the arrestee and promptly inventoried as appropriate. Either an itemized Personal Property Receipt (CPD-11.502), or Copy No. 4 (Green) of the Property Inventory (CPD-34.523) as appropriate, will be issued to the arrestee. After 72 hours have passed, property for which a Personal Property Receipt was issued that is unclaimed will be inventoried by detention personnel on the Property Inventory and processed accordingly.

*Department General Order* No. 82-11, Chicago Police Department, Chicago, Illinois.

> The arrested will place all personal property from his pockets on the receiving desk. Money will be counted in the presence of the arrested. It will then be documented on an inmate's financial sheet. Initials of the Receiving Officer shall be placed next to the amount documented. Jewelry and other personal property, except billfold, will be placed in a jewelry envelope with a complete description of each article documented on the outside of the envelope. Billfolds will remain with the clothing. The

financial slip and the jewelry envelope will then be turned over to the Shift Commander.

*Operational Manual,* Peoria County Jail, Peoria, Illinois.

A primary responsibility of the Jail Division is the custody and safekeeping of prisoner's property. Probably one of the most important functions in the Division:

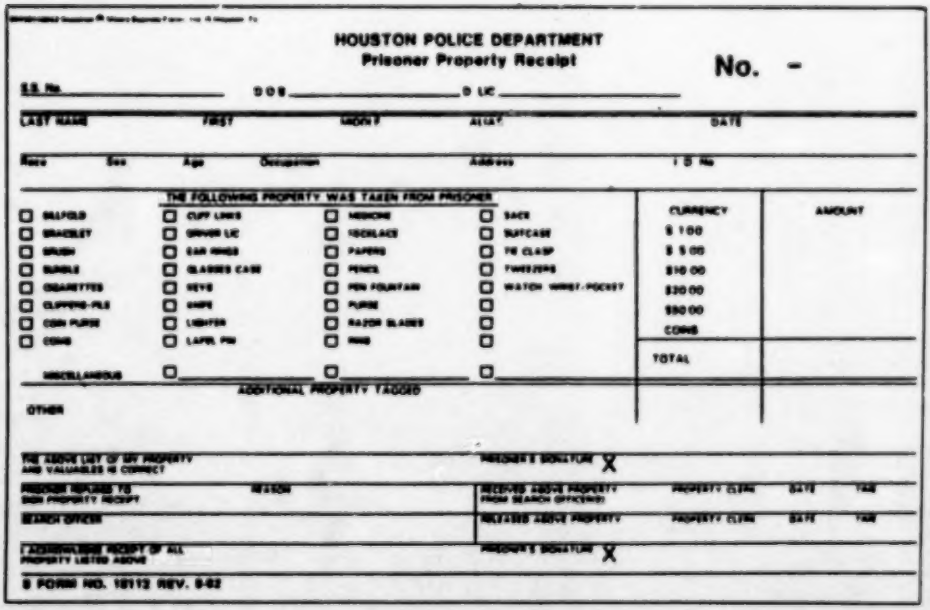
1. Has potential for tremendous liability; a. For the Police Department; b. For the individual Jail Attendant. . .

Extreme accuracy is mandatory:

1. Each item must be tabulated on Property Record;
2. Money count must be correct;. . .
3. Do not tabulate items not included in property;
4. Do not place items in Property Bag which are not itemized.

*Training Outline,* Houston Police Department, Houston, Texas.

A typical form utilized by law enforcement agencies in conjunction with standard booking and inventory procedures is illustrated here:



HOUSTON POLICE DEPARTMENT
Prisoner Property Receipt

No. -

S.S. No. _____ DOB _____ D LIC _____

LAST NAME | FIRST | MIDDLE | ALIAS | DATE

Race | Sex | Age | Occupation | Address | I D No.

THE FOLLOWING PROPERTY WAS TAKEN FROM PRISONER

| | | | |
|---|---|---|---|
| ☐ BELFOLD | ☐ CUFF LINKS | ☐ MEDICINE | ☐ SACK |
| ☐ BRACELET | ☐ DRIVER LIC | ☐ NECKLACE | ☐ SUITCASE |
| ☐ BRUSH | ☐ EAR RINGS | ☐ PAPERS | ☐ TIE CLASP |
| ☐ BUNDLE | ☐ GLASSES CASE | ☐ PENCIL | ☐ TWEEZERS |
| ☐ CIGARETTES | ☐ KEYS | ☐ PEN FOUNTAIN | ☐ WATCH WRIST-POCKET |
| ☐ CLIPPING-FILE | ☐ KNIFE | ☐ PURSE | ☐ |
| ☐ COIN PURSE | ☐ LIGHTER | ☐ RAZOR BLADES | ☐ |
| ☐ COMB | ☐ LAPEL PIN | ☐ RING | ☐ |
| MISCELLANEOUS | ☐ _____ | ☐ _____ | ☐ _____ |

ADDITIONAL PROPERTY TAGGED

OTHER

| CURRENCY | AMOUNT |
|---|---|
| $ 1.00 | |
| $ 5.00 | |
| $10.00 | |
| $20.00 | |
| $50.00 | |
| COINS | |
| TOTAL | |

THE ABOVE LIST OF MY PROPERTY AND VALUABLES IS CORRECT — PRISONER'S SIGNATURE X

PRISONER REFUSED TO SIGN PROPERTY RECEIPT — REASON

RECEIVED ABOVE PROPERTY FROM SEARCH OFFICER(S) — PROPERTY CLERK — DATE — YR

SEARCH OFFICER

RELEASED ABOVE PROPERTY — PROPERTY CLERK — DATE — YR

I ACKNOWLEDGE RECEIPT OF ALL PROPERTY LISTED ABOVE — PRISONER'S SIGNATURE X

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Finally, if there is any doubt that such procedures and forms serve the interests identified in *South Dakota* v. *Opperman*, 428 U.S. 364, 369 (1976), simple reference to the enormous scope of the detention activity in law enforcement agencies should prove convincing. The records of the Houston, Tex., Police Department indicate that in 1981 alone, **96,055 prisoners** were booked into the Houston City Jail. *Houston Police Department Consolidated Jail Statistics:* July 1976-1982 (1982) (unpaginated; report by month—1981). It is safe to say that without the ability to conduct routine booking and inventory searches law enforcement agencies would be paralyzed in their efforts to adequately process large numbers of prisoners.

## CONCLUSION

*Amici* respectfully submit that on the basis of established Fourth Amendment principles and sound public policy this Court should approve the type of booking and inventory search, and the admissibility of its fruits, that took place in the instant case, i.e., pursuant to a standard procedure, with the use of appropriate record forms. Such approval will give effect to the critical interests advanced by this Court in *South Dakota* v. *Opperman* in support of inventory searches, i.e., protection of the arrestee's property, protection of the officer against claims and disputes over lost or stolen property, and protection of officers from danger.

We urge that the decision of the Appellate Court of Illinois, Third Judicial District, should be reversed on the law and on the basis of sound judicial policy.

Respectfully submitted,

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